

PREVAILED

Roll Call No. _____

FAILED

Ayes _____

WITHDRAWN

Noes _____

RULED OUT OF ORDER

HOUSE MOTION _____

MR. SPEAKER:

I move that Engrossed Senate Bill 480 be amended to read as follows:

- 1 Page 9, between lines 31 and 32, begin a new paragraph and insert:
2 "SECTION 6. IC 6-3-4-4.1 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE DECEMBER 16, 2007]: Sec. 4.1. (a) This
4 section applies to taxable years beginning after December 31, 1993.
5 (b) Any individual required by the Internal Revenue Code to file
6 estimated tax returns and to make payments on account of such
7 estimated tax shall file estimated tax returns and make payments of the
8 tax imposed by this article to the department at the time or times and
9 in the installments as provided by Section 6654 of the Internal Revenue
10 Code. However, in applying Section 6654 of the Internal Revenue Code
11 for the purposes of this article, "estimated tax" means the amount
12 which the individual estimates as the amount of the adjusted gross
13 income tax imposed by this article for the taxable year, minus the
14 amount which the individual estimates as the sum of any credits against
15 the tax provided by IC 6-3-3.
16 (c) **If an individual is not a citizen of the United States, the**
17 **individual shall include with the estimated tax the amounts**
18 **attributable to income that are excluded from the individual's**
19 **adjusted gross income:**
20 **(1) for a spouse under IC 6-3-1-3.5(a)(3);**
21 **(2) under IC 6-3-1-3.5(a)(4)(A);**
22 **(3) under IC 6-3-1-3.5(a)(4)(C); and**
23 **(4) under IC 6-3-1-3.5(a)(5)(A).**
24 **The individual shall indicate on the individual's estimated tax**

returns that the individual is not a citizen of the United States.

~~(c)~~ **(d)** Every individual who has adjusted gross income subject to the tax imposed by this article and from which tax is not withheld under the requirements of section 8 of this chapter shall make a declaration of estimated tax for the taxable year. However, no such declaration shall be required if the estimated tax can reasonably be expected to be less than four hundred dollars (\$400). In the case of an underpayment of the estimated tax as provided in Section 6654 of the Internal Revenue Code, there shall be added to the tax a penalty in an amount prescribed by IC 6-8.1-10-2.1(b).

~~(d)~~ **(e)** Every corporation subject to the adjusted gross income tax liability imposed by this article shall be required to report and pay an estimated tax equal to **the lesser of:**

(1) twenty-five percent (25%) of such corporation's estimated adjusted gross income tax liability for the taxable year; or

(2) the annualized income installment calculated in the manner provided by Section 6655(e) of the Internal Revenue Code as applied to the corporation's liability for adjusted gross income tax.

A taxpayer who uses a taxable year that ends on December 31 shall file the taxpayer's estimated adjusted gross income tax returns and pay the tax to the department on or before April 20, June 20, September 20, and December 20 of the taxable year. If a taxpayer uses a taxable year that does not end on December 31, the due dates for filing estimated adjusted gross income tax returns and paying the tax are on or before the twentieth day of the fourth, sixth, ninth, and twelfth months of the taxpayer's taxable year. The department shall prescribe the manner and forms for such reporting and payment.

~~(e)~~ **(f)** The penalty prescribed by IC 6-8.1-10-2.1(b) shall be assessed by the department on corporations failing to make payments as required in subsection ~~(d)~~ **(e)** or ~~(g)~~ **(h)**. However, no penalty shall be assessed as to any estimated payments of adjusted gross income tax which equal or exceed:

(1) twenty percent (20%) of the final tax liability for such taxable year; the annualized income installment calculated under subsection (e); or

(2) twenty-five percent (25%) of the final tax liability for the taxpayer's previous taxable year.

In addition, the penalty as to any underpayment of tax on an estimated return shall only be assessed on the difference between the actual amount paid by the corporation on such estimated return and twenty-five percent (25%) of the corporation's final adjusted gross income tax liability for such taxable year.

~~(f)~~ **(g)** The provisions of subsection ~~(d)~~ **(e)** requiring the reporting and estimated payment of adjusted gross income tax shall be applicable only to corporations having an adjusted gross income tax liability

which, after application of the credit allowed by IC 6-3-3-2 (repealed), shall exceed one thousand dollars (\$1,000) for its taxable year.

~~(g)~~ **(h)** If the department determines that a corporation's:

(1) estimated quarterly adjusted gross income tax liability for the current year; or

(2) average estimated quarterly adjusted gross income tax liability for the preceding year;

exceeds ~~before January 1, 1998, twenty thousand dollars (\$20,000); and, after December 31, 1997, ten five thousand dollars (\$10,000); (\$5,000)~~, after the credit allowed by IC 6-3-3-2 (repealed), the corporation shall pay the estimated adjusted gross income taxes due by electronic funds transfer (as defined in IC 4-8.1-2-7) or by delivering in person or overnight by courier a payment by cashier's check, certified check, or money order to the department. The transfer or payment shall be made on or before the date the tax is due.

~~(h)~~ **(i)** If a corporation's adjusted gross income tax payment is made by electronic funds transfer, the corporation is not required to file an estimated adjusted gross income tax return.

SECTION 7. IC 6-3-4-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: Sec. 8. (a) Except as provided in subsection ~~(d)~~ **(e)** or ~~(f)~~ **(m)**, every employer making payments of wages subject to tax under this article, regardless of the place where such payment is made, who is required under the provisions of the Internal Revenue Code to withhold, collect, and pay over income tax on wages paid by such employer to such employee, shall, at the time of payment of such wages, deduct and retain therefrom the amount prescribed in withholding instructions issued by the department. The department shall base its withholding instructions on the adjusted gross income ~~tax rate for persons; of the employee~~, on the total ~~rates of any income taxes tax~~ that the ~~taxpayer employee~~ is subject to under IC 6-3.5, and on the total amount of exclusions the ~~taxpayer employee~~ is entitled to under IC 6-3-1-3.5(a)(3) and IC 6-3-1-3.5(a)(4). **If the employee is not a citizen of the United States, the employee shall:**

(1) request withholding as if the employee were single, regardless of the employee's actual marital status;

(2) request withholding as if the employee did not have dependents, regardless of whether the employee actually has dependents; and

(3) write "noncitizen" on the form prescribed by the department to determine the employee's exemptions.

(b) Such An employer making payments of any wages:

(1) shall be liable to the state of Indiana for the payment of the tax required to be deducted and withheld under this section and shall not be liable to any ~~individual employee~~ for the amount deducted from the ~~individual's employee's~~ wages and paid over in compliance or intended compliance with this section; and

(2) shall make return of and payment to the department monthly of the amount of tax which under this article and IC 6-3.5 the employer is required to withhold.

~~(b)~~ (c) An employer shall pay taxes withheld under subsection ~~(a)~~ (b) during a particular month to the department no later than thirty (30) days after the end of that month. However, in place of monthly reporting periods, the department may permit an employer to report and pay the tax for:

(1) a calendar year reporting period, if the average monthly amount of all tax required to be withheld by the employer in the previous calendar year does not exceed ten dollars (\$10);

(2) a six (6) month reporting period, if the average monthly amount of all tax required to be withheld by the employer in the previous calendar year does not exceed twenty-five dollars (\$25);

or

(3) a three (3) month reporting period, if the average monthly amount of all tax required to be withheld by the employer in the previous calendar year does not exceed seventy-five dollars (\$75).

An employer using a reporting period (other than a monthly reporting period) must file the employer's return and pay the tax for a reporting period no later than the last day of the month immediately following the close of the reporting period. If an employer files a combined sales and withholding tax report, the reporting period for the combined report is the shortest period required under this section, section 8.1 of this chapter, or IC 6-2.5-6-1.

~~(c)~~ (d) For purposes of determining whether an employee is subject to taxation under IC 6-3.5, an employer is entitled to rely on the statement of an employee as to the employee's county of residence as represented by the statement of address in forms claiming exemptions for purposes of withholding, regardless of when the employee supplied the forms. Every employee shall notify the employee's employer within five (5) days after any change in the employee's county of residence.

~~(d)~~ (e) A county that makes payments of wages subject to tax under this article:

(1) to a precinct election officer (as defined in IC 3-5-2-40.1); and

(2) for the performance of the duties of the precinct election officer imposed by IC 3 that are performed on election day;

is not required, at the time of payment of the wages, to deduct and retain from the wages the amount prescribed in withholding instructions issued by the department.

~~(e)~~ (f) Every employer shall, at the time of each payment made by the employer to the department, deliver to the department a return upon the form prescribed by the department showing:

(1) the total amount of wages paid to the employer's employees;

(2) the amount deducted therefrom in accordance with the provisions of the Internal Revenue Code;

(3) the amount of adjusted gross income tax deducted therefrom in accordance with the provisions of this section;

(4) the amount of income tax, if any, imposed under IC 6-3.5 and deducted therefrom in accordance with this section; and

(5) any other information the department may require.

Every employer making a declaration of withholding as provided in this section shall furnish the employer's employees annually, but not later than thirty (30) days after the end of the calendar year, a record of the total amount of adjusted gross income tax and the amount of each income tax, if any, imposed under IC 6-3.5, withheld from the employees, on the forms prescribed by the department.

~~(f)~~ (g) All money deducted and withheld by an employer shall immediately upon such deduction be the money of the state, and every employer who deducts and retains any amount of money under the provisions of this article shall hold the same in trust for the state of Indiana and for payment thereof to the department in the manner and at the times provided in this article. Any employer may be required to post a surety bond in the sum the department determines to be appropriate to protect the state with respect to money withheld pursuant to this section.

~~(g)~~ (h) The provisions of IC 6-8.1 relating to additions to tax in case of delinquency and penalties shall apply to employers subject to the provisions of this section, and for these purposes any amount deducted or required to be deducted and remitted to the department under this section shall be considered to be the tax of the employer, and with respect to such amount the employer shall be considered the taxpayer. In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest.

~~(h)~~ (i) Amounts deducted from wages of an employee during any calendar year in accordance with the provisions of this section shall be considered to be in part payment of the tax imposed on such employee for the employee's taxable year which begins in such calendar year, and a return made by the employer under subsection ~~(b)~~ (c) shall be accepted by the department as evidence in favor of the employee of the amount so deducted from the employee's wages. Where the total amount so deducted exceeds the amount of tax on the employee as computed under this article and IC 6-3.5, the department shall, after examining the return or returns filed by the employee in accordance with this article and IC 6-3.5, refund the amount of the excess deduction. However, under rules promulgated by the department, the excess or any part thereof may be applied to any taxes or other claim due from the taxpayer to the state of Indiana or any subdivision thereof. No refund shall be made to an employee who fails to file the employee's return or returns as required under this article and IC 6-3.5

1 within two (2) years from the due date of the return or returns. In the
 2 event that the excess tax deducted is less than one dollar (\$1), no
 3 refund shall be made.

4 ~~(i)~~ **(j)** This section shall in no way relieve any ~~taxpayer~~ **employee**
 5 from the ~~taxpayer's employee's~~ obligation of filing a return or returns
 6 at the time required under this article and IC 6-3.5, and, should the
 7 amount withheld under the provisions of this section be insufficient to
 8 pay the total tax of such ~~taxpayer; employee~~, such unpaid tax shall be
 9 paid at the time prescribed by section 5 of this chapter.

10 ~~(j)~~ **(k)** Notwithstanding subsection ~~(b); (c)~~, an employer of a
 11 domestic service employee that enters into an agreement with the
 12 domestic service employee to withhold federal income tax under
 13 Section 3402 of the Internal Revenue Code may withhold Indiana
 14 income tax on the domestic service employee's wages on the employer's
 15 Indiana individual income tax return in the same manner as allowed by
 16 Section 3510 of the Internal Revenue Code.

17 ~~(k)~~ **(l)** To the extent allowed by Section 1137 of the Social Security
 18 Act, an employer of a domestic service employee may report and remit
 19 state unemployment insurance contributions on the employee's wages
 20 on the employer's Indiana individual income tax return in the same
 21 manner as allowed by Section 3510 of the Internal Revenue Code.

22 ~~(l)~~ **(m)** The department shall adopt rules under IC 4-22-2 to exempt
 23 an employer from the duty to deduct and remit from the wages of an
 24 employee adjusted gross income tax withholding that would otherwise
 25 be required under this section whenever:

- 26 (1) an employee has at least one (1) qualifying child, as
 27 determined under Section 32 of the Internal Revenue Code;
- 28 (2) the employee is eligible for an earned income tax credit under
 29 IC 6-3.1-21;
- 30 (3) the employee elects to receive advance payments of the earned
 31 income tax credit under IC 6-3.1-21 from money that would
 32 otherwise be withheld from the employee's wages for adjusted
 33 gross income taxes; and
- 34 (4) the amount that is not deducted and remitted is distributed to
 35 the employee, in accordance with the procedures prescribed by
 36 the department, as an advance payment of the earned income tax
 37 credit for which the employee is eligible under IC 6-3.1-21.

38 The rules must establish the procedures and reports required to carry
 39 out this subsection.

40 ~~(m)~~ **(n)** A person who knowingly fails to remit trust fund money as
 41 set forth in this section commits a Class D felony."

42 Page 15, between lines 6 and 7, begin a new paragraph and insert:
 43 "SECTION 19. [EFFECTIVE JULY 1, 2007] **IC 6-3-4-4.1, as**
 44 **amended by this act, applies to taxable years beginning after**
 45 **December 15, 2007.**

46 SECTION 20. [EFFECTIVE JANUARY 1, 2008] **IC 6-3-4-8, as**

1 **amended by this act, applies to taxable years beginning after**
2 **December 31, 2007."**

3 Renumber all SECTIONS consecutively.
 (Reference is to ESB 480 as printed April 6, 2007.)

Representative Leonard